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October 17, 2016

Mr. Ron Curry  
Regional Administrator  
U.S. Environmental Protection Agency (Region 6)  
1445 Ross Avenue  
Dallas, Texas 55202

RE: EPA's Proposed Cleanup Plan for the San Jacinto River Waste Pits Superfund Site

Mr. Curry:

After reviewing the US Army Corp of Engineers (ERDC) Evaluation of the San Jacinto Waste Pits Feasibility Study Remediation Alternatives, the Texas Association of Business (TAB) communicated to your office in a letter dated August 24 of this year. In that letter, we expressed the position that the Corp of Engineers had accurately and reasonably assessed the risks related to the various alternatives for remediation of the San Jacinto Waste Pits. Further, it appeared that closure of the site in place represented the one alternative that not only provided long-term security for the site, but also minimized the potential for exposure of people, biota and Galveston Bay to further contamination from constituents potentially migrating from the site. Having now reviewed EPA's proposed cleanup plan for the site, our position in favor of a closure in place has not changed.

As we stated in our August letter, TAB and the business community in Texas as a whole have a vital interest in the decisions that will be made about the San Jacinto Waste Pits. The proposed remedy departs significantly from long standing practice within EPA regarding the balance of risk and practicability of potential site remedies. We also have an interest in assuring all businesses in Texas, as well as their employees and the many communities represented by our chamber of commerce partners, that such decisions will be made in the best interests of anyone potentially affected by the outcome while protecting and preserving the limited resources of both private and public entities.

Again, the COE report clearly shows that the cap, particularly with potential upgrades, will be resistant to both erosion and the subsequent release of constituents. The advantages of a closure in place with improved cap in terms of releases of contaminants are far too significant to be ignored.

- The expected release from localized disturbances with an enhanced cap is projected to be more than 1,000 times smaller than compared to the proposed removal action.

- The COE projects that the removal action will set back the natural recovery of the site by more than 10 to 20 years.
- Under the selected removal option potential exposure to the contaminants of concern will be 4,000 times greater than with a secure closure in place.
- Increases in the release of contaminants directly related to the proposed removal will also be directly related to fish tissue concentrations hundreds of times greater for a duration of years.

In describing the scope and role of the proposed response action EPA lists the following objectives:

- Prevent releases of dioxins from the former waste impoundments;
- Reduce human exposure to dioxins from consumption of fish;
- Reduce human exposure to dioxins from contact with contaminated materials; and
- Reduce exposures of benthic macroinvertebrates (clams, crabs, etc.) to dioxin.

In all candor, the proposed plan fails to clearly demonstrate how any of these objectives will be met. Rather, the failure to consider the enhanced closure in place will have exactly the opposite effect, essentially significantly increasing the release from the impoundments of the very dioxins over which the surrounding communities and citizens have expressed so much interest, concern and even fear.

EPA's rejection of the closure in place alternative appears to be based almost entirely on a supposition that the COE did not adequately assess the long-term stability of the enhanced cap that would protect the site. The proposal even goes so far as to state categorically that the proposed removal option is the only one that reliably results in no catastrophic future releases. But that presumption is simply not based on an adequate technical analysis or clearly demonstrated based on facts or credible evidence. In essence, the proposal trades the almost certain significant increase in dioxin releases to the San Jacinto River during the removal action for some presumed longer term security that is more of a hope than a clearly demonstrated possibility. To be credible, EPA's analysis of the risks associated with the enhanced cap needs a significantly more robust technical demonstration and less unfounded assumption.

For example, the proposal states that the changes observed in the San Jacinto River area near the site over the last 50 years will continue, presumably in both the nature of the changes and the rate of change. However, no such proclamation is credible without a detailed analysis of the impact of the reservoir construction within the basin within that 50-year period, other flood control efforts, the impact of current surface water usage patterns, or the impact that severe limitations on most large scale groundwater withdrawals in the region have had on the rate of subsidence.

Further addressing the issue of risks to the enhanced cap presumed to be inadequately addressed by the COE, the plan offers an unsubstantiated opinion that future flooding may be more intense. The proposal attempts to bolster that opinion by citing representations by the National Climate Assessment concerning the inability of flood control infrastructure to handle historical floods and the increasing damage to coastal areas and infrastructure due to storm events. But whether or not flood control infrastructure is adequate or not is an engineering, design and budgetary issue. Given that Texas, and particularly Southeast Texas, hold records for some of the largest historical rainfall events in the continental U.S. it should surprise no one that our flood control structure have their limits at times. Likewise, as population grows and infrastructure investment in high-risk coastal areas increases, simple logic points to the fact that storm events will carry a higher price tag for the damage they can cause. Neither of these observations, however, provides any basis for a representation that the number or severity of storm events is increasing or will increase in the future. Nor does the EPA proposal provide the justification for such an assumption.

Perhaps the most significant observation that the proposed remediation alternative ignores is the performance of the current cap. Regardless of the suppositions about the performance of a significantly enhanced cap, the simple fact is that the current cap, although well below the desired future standards, is working. Data requested by EPA to be collected clearly show that concentrations of toxic constituents of concern in surface sediments are currently below protective concentration levels and continue to decline. Except for samples from wells intentionally completed in the waste deposits, groundwater samples both north and south of IH 10 are in compliance with Texas surface water quality standards and show no mobility to surface waters. Samples of porewater do not detect constituents of concern and fish tissue concentrations (Gulf killifish) show virtually no difference upstream or downstream of the site. Given that the current cap is performing the job it is intended to perform, there is every good reason to believe that a significantly enhanced cap will continue to do the same and with far greater certainty.

It must also be recognized that even under the proposed removal action, some contaminated material will remain in place and secured by an engineered cap. Regardless of the target concentration of contaminated material that will remain, given EPA's dismissal of the enhanced cap endorsed by the COE, a detailed justification of how the remaining wastes will be secured under EPA's pessimistic assumptions of cap performance in the future should be part of any risk assessment of the proposal. The fact that waste will remain on site also presumes that the responsible parties will maintain an ongoing obligation to ensure the security and performance of whatever cap is in place. But to directly address EPA's concerns about long term security of the enhanced cap, that obligation on the part of the responsible parties will exist just as effectively if all of the waste is secured on site.

EPA has received comment concerning the potential remedies for the San Jacinto site and will presumably continue to get input from interested and concerned parties. As we suggested in August, much of that concern about this site is based on misinformation, a lack of understanding of risk assessment and toxicity or simply fear. Regardless, anyone with concerns about the impact of dioxin in the San Jacinto River or Galveston Bay deserves to be made aware of the

relative risks associated with an almost certain, significant increase in dioxin levels as a result of the proposed removal action. But beyond those concerned about the impacts to the existing river and bay system, the proposed removal action dramatically increases the scope of the public with an interest in this project.

Outside of what we believe are unwarranted and unsubstantiated concerns about the performance of an enhanced cap, the closure in place represents not only a reduction in exposure risk to the area near the site, it represents zero risk to communities and residents beyond the site. It is imperative that anyone potentially affected by the proposed removal action or the associated material handling, transportation and disposal be informed of the risks associated with the movement from the site to whatever final destination is selected of the estimated 152,000 cubic yards of contaminated material and the 13,300 truck trips that will be required to affect the suggested site closure.

To summarize, we reiterate our position that closure in place with an enhanced cap for the San Jacinto Waste Pits is consistent with long standing EPA guidance, provides adequately for the long term security of the site and reduces the predictable and immediate local increases in dioxin exposure that local residents fear most from this site. We would urge that EPA carefully and objectively consider that position as well as the areas in the proposal that we have identified as benefiting from additional analysis and justification.

We recognize that EPA has extended the comment period for public input regarding this proposal and thank you for that opportunity. However, given the complex and technical nature of this project, its potential to affect people and communities well beyond the immediate location of the site and the massive amount of information that would have to be reviewed to ensure that all relevant information has been evaluated, we would respectfully request that the comment period be extended an additional 60 days.

Thank you for the opportunity to provide input to this process and for your consideration of our comments. If you or your staff have any questions or if we can provide any additional assistance, please contact me at [sminick@txbiz.org](mailto:sminick@txbiz.org) or 512.637.7707.

Sincerely,

A handwritten signature in black ink, appearing to read "S Minick", written in a cursive style.

Stephen Minick  
Vice President for Government Affairs

Proposed Cleanup Plan for the San Jacinto River Waste Pits Superfund Site

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CC: ✓Community Involvement (6SF-V), U.S. EPA  
Brent Wade, Deputy Executive Director, Office of Waste, TCEQ  
The Honorable Brian Babin, U.S. House of Representatives  
The Honorable Gene Green, U.S. House of Representatives  
The Honorable John Whitmire, Texas Senate  
The Honorable Sylvia Garcia, Texas Senate  
The Honorable Wayne Smith, Texas House of Representatives  
The Honorable Ana Hernandez, Texas House of Representatives  
The Honorable Gilbert Peña, Texas House of Representatives